IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 11.07.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition Nos.457 to 461 of 2006

Venkatesan @ Karukka Venkatesan ... Petitioner in HCP 457/2006

Saravanan (a) Kizhangu Saravanan ... Petitioner in HCP 458/2006

Kushmi @ Muthuvel .. Petitioner in HCP 459/2006

Deepa @ Deepan .. Petitioner in HCP 460/2006

Saravanan @ Kava Saravanan .. Petitioner in HCP 461/2006

Vs.

1.The State of Tamil Nadu, rep. by its
Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The Commissioner of Police,
Greater Chennai,
Egmore, Chennai-8. .. Respondents in all HCPs.

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Petitions under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the entire records leading to the detention of the petitioners viz., Venkatesan @ Karukka Venkatesan, S/o Sathya Narayanan, Saravanan (a) Kizhangu Saravanan, S/o Elumalai, Kushmi @ Muthuvel, S/o Pichandi, Deepa @ DeepanS/o Gunasekaran, Saravanan @ Kava Saravanan, S/o Chellappa have been detained under Act 14/1982 as a "Goonda" vide detention orders dated 06.04.2006 on the file of the second respondent herein made in memo Nos.110/BDFGISV/2006, 111/BDFGISV/2006, 113/BDFGISV/2006, 109/BDFGISV/2006, and

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112/BDFGISV/2006, quash the same and consequently direct the respondents herein to produce the body and person of the said detenus before this Court and set them at liberty from the Central Prison, Chennai.

For Petitioners : Mr.M.Rajavelu
For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

COMMON ORDER

(Order of the Court was made by P.SATHASIVAM,J.)

Since the impugned detention orders were passed on the same day i.e. 06.04.2006 relating to the same occurrence and the allegations made against the detenus are one and the same, we dispose of all the petitions by the following common order.

2. The petitioners, viz., Venkatesan @ Karukka Venkatesan, Saravanan (a) Kizhangu Saravanan, Kushmi @ Muthuvel, Deepa @ Deepan, Saravanan @ Kava Saravanan, who were detained as "Goonda" as contemplated under Section 3(1) of the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by separate impugned order dated 06.04.2006, challenge the same in HCP Nos.457 to 46`1 of 2006 respectively.

3. Heard learned counsel for the petitioners as well as learned Additional Public Prosecutor for the respondents.

4. At the foremost, the learned counsel appearing for the petitioners, after taking us through the grounds of detention and all other connected materials, has contended that the detenus are in no way connected with PRC No.156 of 2003 on the file of XVIII Metropolitan Magistrate, Saidapet, Chennai. The learned counsel has further elaborated that inasmuch as none of the detenus is the accused in the said case, there is no need for them to go to the Court on that date and time as mentioned in the grounds of detention. In such circumstances, the reasons stated in the grounds of detention for detaining all the detenus as "Goondas" under Act 14 of 1982 cannot be sustained.

5. The learned Additional Public Prosecutor, after taking us through the First Information Report, which is available at page 35 of the paper book supplied to the detenus, has contended that in view of the information stated therein and the materials collected, the detaining authority is fully justified in clamping the order of detention. According to him, even for a solitary instance, which has an impact on the general public, the detaining

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authority is empowered to pass appropriate orders invoking the provisions of Act 14 of 1982.

6. In the light of the said contention, we have perused the entire grounds as well as the materials supplied to the detenus. From the materials referred to in the grounds of detention, it is seen that on 06.03.2006, one Sekar and Raghu came to XVIII Metropolitan Magistrate Court, Saidapet, Chennai to recall the warrant issued against Sekar in PRC No.148 of 2003 and after attending the Court, they were proceeding in a motor cycle bearing registration No.TN-07-AV-6631 to their house. On the same day, Deeba @ Deeban, Venkatesan @ Karukka Venkatesan, Saravanan @ Kizhangu Saravanan, Saravanan @ Kava Saravanan, Suresh @ Naina Suresh, Kushmi @ Muthuvel and Velan @ Velavan came to XVIII Metropolitan Magistrate Court, Saidapet, Chennai to attend the hearing in PRC No.156/2003. After attending the Court, they had also proceeded in three motor cycles. Deeba @ Deeban and others, on noticing Sekar and Raghu, came to the Court and moving in motor cycle lonely, followed them from Saidapet Court and wanting to utilise the opportunity, cornered them at K.Bharathidasan Salai and Cresant Street. Thereafter, Saravanan @ Kizhangu Saravanan, who was armed with log, beat Sekar over his head and the blow fell over the side mirror of the motor cycle. When Saravanan @ Kizhangu Saravanan again beat Sekar, who was driving the motor cycle, lost his balance and both Sekar and Raghu fell on the ground with the motor cycle. Deeba @ Deeban, Venkatesan @ Karukka Venkatesan, Saravanan @ Kizhangu Saravanan, Saravanan @ Kava Saravanan, Suresh @ Naina Suresh, Kushmi @ Muthuvel and Velan @ Velavan surrounded Sekar and Deeba @ Beeban, by uttering filthy language, assaulted him and others also assaulted Sekar. When the said Sekar tried to escape, they chased and surrounded and assaulted him over his person indiscriminately. They threatened Raghu, who came for Sekar's rescue. The grounds of detention further proceed that the public, who were at the spot and the girls who were returning from the college, noticing the atrocious activities, ran hither and thither for safe places out of fear and danger to their lives. The public, who were proceeding in their vehicles, noticed the atrocious activities and feared to move further, resulting in traffic dislocation in that area. The nearby shopkeepers noticed the atrocious activities and closed down their shops out of fear and danger to their lives and properties. The detenus created terror and panic at the spot. Taking advantage of the panic situation, the detenus escaped from the spot. The said Raghu thereafter proceeded to E3 Teynampet Police Station and lodged a complaint. The Inspector of Police, Law and Order, E3 Teynampet Police Station registered a case in Crime No.233/2006 under Sections 147, 148, 341, 302 and 506(ii) IPC. The Inspector of Police proceeded to the spot and prepared observation mahazar and rough sketch and seized the blood stained earth and plain earth under the cover of mahazar, examined the witnesses and recorded their statements. Some of the detenus had surrendered before the Judicial Magistrate, Thiruvotriyur, Chennai in respect of E3

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Teynampet Police Station Crime No.233/2006 and the learned Magistrate, remanded them to the Judicial custody till 15.03.2006. The other detenus have also surrendered before the XVIII Metropolitan Magistrate, Saidapet, Chennai and after police custody, they were remanded to judicial custody till 29.03.2006 and the remand was further extended till12.04.2006. Thereafter, the Inspector of Police recorded statements from various persons who witnessed the occurrence.

7. The grounds of detention further show that though the detenus were involved in several cases including murder, those cases were not taken into consideration while passing the impugned order of detention and the detaining authority has specifically stated that those facts were only to show that the detenus are habitual offenders. The detaining authority, after noting that the detenus had committed a brutal murder in a public road without allowing the law to take its course by taking the law into their hands without respecting the judicial system and acted in a manner prejudicial to the maintenance of public order and satisfying himself with the materials placed before him, passed the impugned order detaining all of them to custody, as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982.

8. Taking note of the fact that all the accused were remanded in E3 Teynampet Police Station Crime No.233 of 2006 and their bail applications were dismissed and there is real possibility of their coming out on bail by filing another bail application before the same Court or before the higher Forum and finding that if they come out on bail, they will indulge in further activities, which will be prejudicial to the maintenance of public order and finding that there is a compelling necessity to detain them in order to prevent them from indulging in such further activities, the orders of detention were passed.

9. A perusal of the details narrated in the grounds of detention coupled with the materials supplied in the form of booklet shows that the detaining authority has considered all the relevant materials. It cannot be contended that the detaining authority has passed the impugned orders of detention bereft of any details/materials, whether the detenus have any connection with PRC No.156 of 2003 or not. According to the grounds, as narrated earlier, the detenus have committed a grave offence of murder in the presence of public, that too during day time and these material aspects have been considered and taken note of by the detaining authority. In this regard, it is relevant to refer the Division Bench decision of this Court reported in 1993 Law Weekly Criminal 113(SUBBAIAH @ THIRUVOTIYUR SUBBAIYAH 2 MAHADEVAN VS. THE COMMISSIONER OF POLICE, MADRAS CITY AND ANOTHER) In that case, the Division Bench has considered elaborately about the "deviation caused", "habituality", "solitary instances" etc. The following conclusion in para 28, which is relevant is as follows:

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> "The definition of 'goonda' refers to the habitual commission or attempt to commit or abatement of the commission of offences specified in the section. When a person is found to be a goonda it goes without saying that he is a person who habitually commits or attempts to commit or abets commission of offences. Hence it is not necessary further for the authority to wait for his committing another act which is likely to cause prejudice to the maintenance of public order. If the facts and circumstances placed before the authority are sufficient to enable him to arrive at the conclusion that he is a goonda then those facts and circumstances are sufficient to consider the second question also as to whether such acts will cause prejudice to the maintenance of public order. The object of the Act is to prevent the person concerned to act in a manner prejudicial to the maintenance of public order. It would be futile to contend that the authority should wait till he acts in such a manner. In that case it will not be preventive detention but a case of detention after the commission of the offence. Hence a reading of S.3 (1) together with S.2(a) and (f) of the Goondas Act makes it clear that if the commission of offences is sufficient to brand a person as a goonda within the meaning of Section 2(f) they can themselves be taken into account for considering the question whether he is acting in a manner prejudicial to the maintenance of public order."

It is also relevant to note their conclusion in para 32, which reads as follows:

> "The next limb of the argument is that there is no registered case with regard to the other offences as against the petitioner. Though it is not necessary for the purpose of this case to consider the said objection, we held that there is no substance in this objection. What is relevant for the purpose of goonda is only commission of offences and not registration of cases. If the materials before the authority prove that the person concerned had habitually committed offences or attempted to commit the same or abetted commission of the same that would be sufficient to show that he is a goonda and the fact that cases were not actually registered against him would not in any way be material."

10. It is clear that if the materials before the authority prove that the person concerned habitually committed offences or attempted to commit the same, that would be sufficient to show that

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he is a "Goonda" and there is no need that the cases are have to be actually registered against him. If the detaining authority, with the available materials, concluded that there was involvement of the person or persons concerned in the occurrence and that if he/they are let free, it would affect public peace and public order, he is free to pass appropriate orders under Act 14 of 1982. We have already referred to the details furnished in the grounds of detention.

11. It is also relevant to refer the recent judgment of the Supreme Court reported in 2004 SCC (Criminal) 1944 (COMMISSIONER OF POLCIE AND OTHERS VS. C.ANITA). While considering the "public order", "Law and Order" and "security of the State" their Lordships have held in paragraphs 10 to 13 as follows:

> "10.Public Order", "Law and Order" and the "security of the State" fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect the public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an impact that it would affect both public order and the security of the State.(See Kishori Mohan Bera V. State of W.B., Pushkar Mukherjee Vs. State of W.B., Arun Ghosh Vs. State of W.B. and Nagendra Nath Mondal Vs. State of W.B.).
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> 11.The distinction between "law and order" and "public order" has been pointed out succinctly in Arun Ghosh case. According to that decision the true distinction between the areas of "law and order" and "public order" is
>
> one of degree and extent of the reach of the act in question upon society.
>
> The Court pointed out that (SCC p.100, para3)
>
> the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different.
>
> (See Babul Mitraa Vs. State of W.B. and Milan Banik Vs. State of W.B.)

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> 12.The true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore, touches the problem of law and order only, while in another it might affect public order. The act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different.
>
> 13. The two concepts have well-defined contours, it being well established that stray and unorganised crimes of theft and assault are not matters of public order since they do not tend to affect the even flow of public life. Infractions of law are bound in some measure to lead to disorder but every infraction of law does not necessarily result in public disorder. Law and Order represents the largest scale within which is the next circle representing public order and the smallest circle represents the security of State. "Law and Order" comprehends disorders of less gravity than those affecting "public order" just as 'public order" comprehends disorders of less gravity than those affecting "security of State". (See Kuso Sah V. State of Bihar, Harpreet Kaur Vs. State of Maharashtra, T.K.Gopal Vs. State of Karnataka and State of Maharashtra Vs. Mohd. Yakub.)"

12. If we apply the principles enunciated above to the case on hand and considering the materials placed before the detaining authority, it cannot be claimed that the detaining authority has committed an error in passing the detention order. On the other hand, we are satisfied that it is for the detaining authority to consider the sufficiency of the materials to arrive at a subjective satisfaction and it is not for this Court to go into the sufficiency or otherwise thereof. Accordingly, we reject the first contention raised by the learned counsel for the petitioners.

13. The learned counsel for the petitioners next contended that even though the same objection was raised in the representations of the petitioners, no reply was sent by the respondents. The learned Additional Public Prosecutor has brought to our notice that on 24.05.2006, a reply has been sent to all the

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petitioners/detenus. A perusal of the reply by the Government shows that the Government has considered the grievance/claim made in the representations and after finding that there is no merit, rejected the same. Accordingly, we do not find any substance in the said contention.

14. Finally, the learned counsel for the petitioners submitted that there is delay in disposal of the representation of the detenus, which vitiates the ultimate order of detention. With reference to the above claim, learned Additional Public Prosecutor has furnished the details which show that the representations of the detenus dated 20.04.2006 were received by the Government on 09.05.2006 and remarks were called for on 10.05.2006, which were received by the Government on 16.05.2006 and the file was submitted on 22.05.2006 and the same was dealt with by the Under Secretary on the same day, i.e. on 22.05.2006 and by the Deputy Secretary on 23.05.2006 and finally, the Minister for Prohibition and Excise passed orders on 24.05.2006. The rejection letter was prepared on the same day, i.e. on 24.05.2006 and the same was sent to the detenus on 25.05.2006 and served on them on 26.05.2006. If we exclude the intervening public holidays, we are of the view that there was no let up or undue delay at any stage. Accordingly, we reject the said contention also.

15. In the light of what is stated above, we do not find any error or infirmity or any valid ground for interference. Consequently, the Habeas Corpus Petitions fail and the same are dismissed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2.The Commissioner of Police, Greater Chennai, Egmore, Chennai-8.

3. The Superintendent, Central Prison, Chennai.
(In duplicate for communication to detenus)

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4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+5 ccs to Mr.M. Rajavelu, Advocate, Sr. Nos.30261 to 30265

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